IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6288 of 2005
With
SPECIAL CIVIL APPLICATION No. 6753 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHRUNISHA BEGUM KASAMKHAN & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MA PAREKH for Petitioner No(s).: 1,2.

GMR PR ABICHANDANI, AGP for Respondent No(s).: 1 to 3

MR HARSHAD K PATEL for Respondent No(s).: 4.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 08/08/2005

ORAL JUDGMENT

Rule. Learned AGP waives service of notice of rule on behalf of respondent No.1 to 3 and learned advocate

Mr.Harshad Patel waives service of rule on behalf of respondent No.4. At the joint request of the learned advocates appearing for the parties, the petitions are taken up for final disposal today.

2. In the present petitions, the petitioners have challenged the orders passed by the revenue authorities regarding the mutation entries in the revenue records pertaining to land bearing survey Nos.51, 53 and 54 of village Bilotha, Taluka Jhagadia, Dist: Bharuch. By the orders passed by the Mamlatdar, Collector and the Joint Secretary (Appeals), certain entries came to be made in favour of respondent No.4 which was opposed by the petitioners. It is the case of the petitioners, as set out in the petitions, that the Mamlatdar before effecting the entries no intimation of the hearing was given to the petitioners and these entries came to be made by the Mamlatdar without affording an opportunity of being heard to the petitioners. The petitioners have stated that respondent No.4 had supplied false addresses of the petitioners and thus entire proceedings were decided by the Mamlatdar without proper notice to the petitioners. Before this Court also, on 19.4.2004, learned advocate for the petitioners stated that no hearing has been

given to the petitioners before making entries in the revenue records. Neither the State Government nor the private respondent has filed any affidavit controverting this factual aspect of the matter. Therefore, only on this ground, I am inclined to allow the petitions by quashing and setting aside the impugned orders. It is pertinent to note that though respondent No.4 has filed an affidavit, there is no clear denial of the averments of the petitioners that for want of correct address notices were not duly served to the petitioners. It is only stated that the Mamlatdar had issued notice before proceeding further with entering the name of respondent No.4 in the revenue record, but neither the petitioner nor her father had chosen to remain present before the Mamlatdar though the notice was issued to them. Thus the stress is on issuance of notice and not on its service.

3. In view of the above discussion, the impugned orders passed by the Mamlatdar posting the entires in the above mentioned lands in favour of respondent No.4 as upheld by the orders passed by the Collector on 23.7.99 and the Joint Secretary on 11.3.05 are quashed and set aside. The proceedings are remanded to the Mamlatdar for fresh consideration after hearing the petitioners. The

petitioners will not insist on separate notice being issued by the Mamlatdar and will submit to the jurisdiction of the Mamlatdar by participating in the fresh proceedings upon remand. The petitioners and respondent No.4 shall remain present before the Mamlatdar on 5th September 2005 after which further proceedings shall be taken by the Mamlatdar.

4. With the above directions, the petition is disposed of. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)

(vjn)